

SENATE, No. 1727

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

SYNOPSIS

Includes self-insured entities and plans under certain provisions of "New Jersey Insurance Fraud Prevention Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning insurance fraud and amending P.L.1983, c.320.

2

3 **BE IT ENACTED** *by the Senate and General Assembly of the State*
4 *of New Jersey:*

5

6 1. Section 3 of P.L.1983, c.320 (C.17:33A-3) is amended to
7 read as follows:

8 3. As used in **[this act]** P.L.1983, c.320 (C.17:33A-1 et seq.):

9 "Attorney General" means the Attorney General of New Jersey
10 or his designated representatives.

11 "Bureau" means the Bureau of Fraud Deterrence established by
12 section 8 of P.L.1983, c.320 (C.17:33A-8).

13 "Commissioner" means the Commissioner of Banking and
14 Insurance.

15 "Hospital" means any general hospital, mental hospital,
16 convalescent home, nursing home or any other institution, whether
17 operated for profit or not, which maintains or operates facilities for
18 health care.

19 "Insurance company" means:

20 a. Any corporation, association, partnership, reciprocal
21 exchange, interinsurer, Lloyd's insurer, fraternal benefit society or
22 other person engaged in the business of insurance pursuant to
23 Subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.),
24 or Subtitle 3 of Title 17B of the New Jersey Statutes (N.J.S.17B:17-
25 1 et seq.);

26 b. Any medical service corporation operating pursuant to
27 P.L.1940, c.74 (C.17:48A-1 et seq.);

28 c. Any hospital service corporation operating pursuant to
29 P.L.1938, c.366 (C.17:48-1 et seq.);

30 d. Any health service corporation operating pursuant to
31 P.L.1985, c.236 (C.17:48E-1 et seq.);

32 e. Any dental service corporation operating pursuant to
33 P.L.1968, c.305 (C.17:48C-1 et seq.);

34 f. Any dental plan organization operating pursuant to
35 P.L.1979, c.478 (C.17:48D-1 et seq.);

36 g. Any insurance plan operating pursuant to P.L.1970, c.215
37 (C.17:29D-1);

38 h. The New Jersey Insurance Underwriting Association
39 operating pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.); and

40 i. (Deleted by amendment, P.L.2010, c.32)

41 j. Any risk retention group or purchasing group operating
42 pursuant to the "Liability Risk Retention Act of 1986," 15 U.S.C.
43 s.3901 et seq.

44 "Pattern" means five or more related violations of P.L.1983,
45 c.320 (C.17:33A-1 et seq.). Violations are related if they involve

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 either the same victim, or same or similar actions on the part of the
2 person or practitioner charged with violating P.L.1983, c.320
3 (C.17:33A-1 et seq.).

4 "Person" means a person as defined in R.S.1:1-2, and shall
5 include, unless the context otherwise requires, a practitioner.

6 "Principal residence" means that residence at which a person
7 spends the majority of his time. Principal residence may be an
8 abode separate and distinct from a person's domicile. Mere
9 seasonal or weekend residence within this State does not constitute
10 principal residence within this State.

11 "Practitioner" means a licensee of this State authorized to
12 practice medicine and surgery, psychology, chiropractic, or law or
13 any other licensee of this State whose services are compensated,
14 directly or indirectly, by insurance proceeds, or a licensee similarly
15 licensed in other states and nations or the practitioner of any
16 nonmedical treatment rendered in accordance with a recognized
17 religious method of healing.

18 "Producer" means an insurance producer as defined in section 3
19 of P.L.2001, c.210 (C.17:22A-28), licensed to transact the business
20 of insurance in this State pursuant to the provisions of the "New
21 Jersey Insurance Producer Licensing Act of 2001," P.L.2001, c.210
22 (C.17:22A-26 et seq.).

23 "Self-insured entity" means a public or private entity that retains
24 the risk and responsibility for paying for losses from contingent
25 events for beneficiaries of its self-insured plan, in accordance with
26 the terms of its self-insured plan, from its own funds or from its
27 own funds together with funds contributed by or on behalf of the
28 beneficiaries of the self-insured plan.

29 "Self-insured plan" means any plan of benefits for losses
30 incurred from contingent events, which may include health, bodily
31 injury, property damage, liability, disability, life, workers'
32 compensation or other benefits not prohibited by law, offered by a
33 self-insured entity to its employees, members, officers, owners or
34 other persons entitled to benefits under the terms of the self-insured
35 plan.

36 "Statement" includes, but is not limited to, any application,
37 writing, notice, expression, statement, proof of loss, bill of lading,
38 receipt, invoice, account, estimate of property damage, bill for
39 services, diagnosis, prescription, hospital or physician record, X-
40 ray, test result or other evidence of loss, injury or expense.
41 (cf: P.L.2010, c.32, s.2)

42
43 2. Section 4 of P.L.1983, c.320 (C.17:33A-4) is amended to
44 read as follows:

45 4. a. A person or a practitioner violates **[this act]** P.L.1983,
46 c.320 (C.17:33A-1 et seq.) if he:

47 (1) Presents or causes to be presented any written or oral
48 statement as part of, or in support of or opposition to, a claim for

1 payment or other benefit pursuant to an insurance policy, a self-
2 insured plan, or the "Unsatisfied Claim and Judgment Fund Law,"
3 P.L.1952, c.174 (C.39:6-61 et seq.), knowing that the statement
4 contains any false or misleading information concerning any fact or
5 thing material to the claim; or

6 (2) Prepares or makes any written or oral statement that is
7 intended to be presented to any insurance company, a self-insured
8 entity, the Unsatisfied Claim and Judgment Fund, or any claimant
9 thereof in connection with, or in support of or opposition to any
10 claim for payment or other benefit pursuant to an insurance policy,
11 a self-insured plan, or the "Unsatisfied Claim and Judgment Fund
12 Law," P.L.1952, c.174 (C.39:6-61 et seq.), knowing that the
13 statement contains any false or misleading information concerning
14 any fact or thing material to the claim; or

15 (3) Conceals or knowingly fails to disclose the occurrence of an
16 event which affects any person's initial or continued right or
17 entitlement to: (a) any insurance benefit or payment; **【or】** (b) the
18 amount of any benefit or payment to which the person is entitled; or
19 (c) any benefit or payment under a self-insured plan;

20 (4) Prepares or makes any written or oral statement, intended to
21 be presented to any insurance company or producer for the purpose
22 of obtaining:

23 (a) a motor vehicle insurance policy, that the person to be
24 insured maintains a principal residence in this State when, in fact,
25 that person's principal residence is in a state other than this State; or

26 (b) an insurance policy, knowing that the statement contains any
27 false or misleading information concerning any fact or thing
28 material to an insurance application or contract;

29 (5) Conceals or knowingly fails to disclose any evidence,
30 written or oral, which may be relevant to a finding that a violation
31 of the provisions of paragraph (4) of this subsection a. has or has
32 not occurred; or

33 (6) Prepares, presents or causes to be presented to any insurer or
34 other person, or demands or requires the issuance of, a certificate of
35 insurance that contains any false or misleading information
36 concerning the policy of insurance to which the certificate makes
37 reference, or assists, abets, solicits or conspires with another to do
38 any of these acts. As used in this paragraph, "certificate of
39 insurance" means a document or instrument, regardless of how
40 titled or described, that is, or purports to be, prepared or issued by
41 an insurer or insurance producer as evidence of property or casualty
42 insurance coverage. The term shall not include a policy of
43 insurance, insurance binder, policy endorsement, or automobile
44 insurance identification or information card.

45 b. A person or practitioner violates **【this act】** P.L.1983, c.320
46 (C.17:33A-1 et seq.) if he knowingly assists, conspires with, or
47 urges any person or practitioner to violate any of the provisions of
48 **【this act】** P.L.1983, c.320 (C.17:33A-1 et seq.).

- 1 c. A person or practitioner violates **【this act】** P.L.1983, c.320
2 (C.17:33A-1 et seq.) if, due to the assistance, conspiracy or urging
3 of any person or practitioner, he knowingly benefits, directly or
4 indirectly, from the proceeds derived from a violation of **【this act】**
5 P.L.1983, c.320 (C.17:33A-1 et seq.).
- 6 d. A person or practitioner who is the owner, administrator or
7 employee of any hospital violates **【this act】** P.L.1983, c.320
8 (C.17:33A-1 et seq.) if he knowingly allows the use of the facilities
9 of the hospital by any person in furtherance of a scheme or
10 conspiracy to violate any of the provisions of **【this act】** P.L.1983,
11 c.320 (C.17:33A-1 et seq.).
- 12 e. A person or practitioner violates **【this act】** P.L.1983, c.320
13 (C.17:33A-1 et seq.) if, for pecuniary gain, for himself or another,
14 he directly or indirectly solicits any person or practitioner to
15 engage, employ or retain either himself or any other person to
16 manage, adjust or prosecute any claim or cause of action, against
17 any person, for damages for negligence, or, for pecuniary gain, for
18 himself or another, directly or indirectly solicits other persons to
19 bring causes of action to recover damages for personal injuries or
20 death, or for pecuniary gain, for himself or another, directly or
21 indirectly solicits other persons to make a claim for personal injury
22 protection benefits pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.);
23 provided, however, that this subsection shall not apply to any
24 conduct otherwise permitted by law or by rule of the Supreme
25 Court.
- 26 f. A person who operates a motor vehicle on the public
27 highways of this State, which motor vehicle is insured by a policy
28 issued under the laws of another state, and who maintains a
29 principal residence in this State or who has his motor vehicle
30 principally garaged in this State violates the provisions of P.L.1983,
31 c.320 (C.17:33A-1 et seq.) if he has knowingly prepared or made
32 any written or oral statement, presented to any insurance company
33 or producer licensed to transact the business of insurance under the
34 laws of that other state, and which resulted in obtaining a motor
35 vehicle insurance policy for his motor vehicle in that other state,
36 that the person to be insured:
- 37 (1) Maintains a principal residence in the other state when, in
38 fact, that person's principal residence is in this State; or
- 39 (2) Has his vehicle principally garaged in the other state, when,
40 in fact, that person has his motor vehicle principally garaged in this
41 State.
- 42 This subsection shall not apply to a person who insures a vehicle
43 in another state, as permitted by and in accordance with the laws of
44 that state, based on a second residence, or attendance at an
45 educational institution, in that other state, if in obtaining the policy
46 the person truthfully discloses to the insurance company or

1 producer the state of the person's principal residence and the state
2 where the vehicle is principally garaged.

3 (cf: P.L.2015, c.195, s.10)

4
5 3. Section 7 of P.L.1983, c.320 (C.17:33A-7) is amended to
6 read as follows:

7 7. a. Any insurance company or self-insured entity damaged
8 as the result of a violation of any provision of **【this act】** P.L.1983,
9 c.320 (C.17:33A-1 et seq.) may sue therefor in any court of
10 competent jurisdiction to recover compensatory damages, which
11 shall include reasonable investigation expenses, costs of suit and
12 attorneys fees.

13 b. A successful claimant under subsection a. shall recover
14 treble damages if the court determines that the defendant has
15 engaged in a pattern of violating **【this act】** P.L.1983, c.320
16 (C.17:33A-1 et seq.).

17 c. A claimant under this section shall mail a copy of the initial
18 claim, amended claim, counterclaims, briefs and legal memoranda
19 to the commissioner at the time of filing of such documents with the
20 court wherein the matter is pending. A successful claimant shall
21 report to the commissioner, on a form prescribed by the
22 commissioner, the amount recovered and such other information as
23 is required by the commissioner.

24 d. Upon receipt of notification of the filing of a claim by an
25 insurer, the commissioner may join in the action for the purpose of
26 seeking judgment for the payment of a civil penalty authorized
27 under section 5 of **【this act】** P.L.1983, c.320 (C.17:33A-5). If the
28 commissioner prevails, the court may also award court costs and
29 reasonable attorney fees actually incurred by the commissioner.

30 e. No action shall be brought by an insurance company or self-
31 insured entity under this section more than six years after the cause
32 of action has accrued.

33 (cf: P.L.1997, c.151, s.5.)

34
35 4. Section 11 of P.L.1983, c.320 (C.17:33A-11) is amended to
36 read as follows:

37 11. Papers, documents, reports, or evidence relative to the
38 subject of an investigation under **【this act】** P.L.1983, c.320
39 (C.17:33A-1 et seq.) shall not be subject to public inspection except
40 as specifically provided in **【this act】** P.L.1983, c.320 (C.17:33A-
41 1 et seq.). The commissioner shall not detain subpoenaed records
42 after an investigation is closed or, if a claim for a civil penalty is
43 filed by the commissioner pursuant to section 5 of P.L.1983, c.320
44 (C.17:33A-5) or subsection d. of section 7 of P.L.1983, c.320
45 (C.17:33A-7), upon final disposition of the claim by a court of
46 competent jurisdiction, whichever shall be the later date. Subpoenaed
47 records shall be returned to the persons from whom they were

1 obtained. The commissioner may, in his discretion, make relevant
2 papers, documents, reports, or evidence available to the Attorney
3 General, an appropriate licensing authority, law enforcement
4 agencies, an insurance company, self-insured entity, or insurance
5 claimant injured by a violation of **【this act】** P.L.1983, c.320
6 (C.17:33A-1 et seq.), consistent with the purposes of **【this act】**
7 P.L.1983, c.320 (C.17:33A-1 et seq.) and under such conditions as
8 he deems appropriate. Such papers, documents, reports, or evidence
9 shall not be subject to subpoena, unless the commissioner consents,
10 or until, after notice to the commissioner and a hearing, a court of
11 competent jurisdiction determines that the commissioner would not
12 be unnecessarily hindered by such subpoena. Division investigators
13 and insurance company fraud investigators shall not be subject to
14 subpoena in civil actions by any court of this State to testify
15 concerning any matter of which they have knowledge pursuant to a
16 pending insurance fraud investigation by the division, or a pending
17 claim for civil penalties initiated by the commissioner.
18 (cf: P.L.1997, c.151, s.7.)

19
20 5. This act shall take effect immediately.

21 22 23 STATEMENT

24
25 This bill includes self-insured entities and plans under certain
26 provisions of the "New Jersey Insurance Fraud Prevention Act."
27 Specifically, the bill provides that persons or practitioners violate
28 that act if they:

29 (1) Present or cause to be presented any written or oral
30 statement as part of, or in support of or opposition to, a claim for
31 payment or other benefit pursuant to a self-insured plan, knowing
32 that the statement contains any false or misleading information
33 concerning any fact or thing material to the claim;

34 (2) Prepare or make any written or oral statement that is
35 intended to be presented to a self-insured entity, or in support of or
36 opposition to any claim for payment or other benefit to a self-
37 insured plan, knowing that the statement contains false or
38 misleading information concerning anything material to the claim;
39 or

40 (3) Conceal or knowingly fail to disclose the occurrence of an
41 event which affects any person's initial or continued right or
42 entitlement to any benefit or payment under a self-insured plan.

43 Under the bill, a "self-insured entity" is a public or private entity
44 that retains the risk and responsibility for paying for losses from
45 contingent events for beneficiaries of its self-insured plan, in
46 accordance with the terms of its self-insured plan, from its own
47 funds or from its own funds together with funds contributed by or
48 on behalf of the beneficiaries of the self-insured plan. A "self-

1 insured plan” is any plan of benefits for losses incurred from
2 contingent events, which may include health, bodily injury,
3 property damage, liability, disability, life, workers’ compensation
4 or other benefits not prohibited by law, offered by a self-insured
5 entity to its employees, members, officers, owners or other persons
6 entitled to benefits under the terms of the self-insured plan.

7 The bill provides that self-insured entities damaged as the result
8 of a violation of any provision of the "New Jersey Insurance Fraud
9 Prevention Act" may bring suit in a court of competent jurisdiction
10 to recover compensatory damages.

11 The bill provides that the Commissioner of Banking and
12 Insurance may make relevant papers, documents, reports, or
13 evidence available to a self-insured entity injured by a violation of
14 the "New Jersey Insurance Fraud Prevention Act" consistent with
15 the purposes of that act and under such conditions as the
16 commissioner deems appropriate.